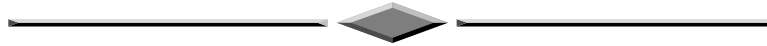


GENERAL TYPES OF TAXABLE TRANSACTIONS ADMISSIONS



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GENERAL TYPES OF TAXABLE TRANSACTIONS

ADMISSIONS

INTRODUCTION

This section deals with the audit methods and procedures applicable to sales and use tax audits which contain sales of admissions.

KRS 139.100(2)(c) (Effective until July 1, 2004)

- (2) "Retail sale" or "sale at retail" shall include but shall not be limited to the following:
 - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply, however, to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to an individual;
 - (b) The furnishing of sewer services;
 - (c) The sale of admissions, except those taxed under KRS 138.480;
 - (d) The furnishing of communications services, other than mobile telecommunications services as defined in 4 U.S.C. sec. 124, to a service address in this state, regardless of where those services are billed or paid, when the communications service:
 - 1. Originates and terminates in this state;
 - 2. Originates in this state; or
 - 3. Terminates in this state;
 - (e) The furnishing of mobile telecommunications services as defined in 4 U.S.C. sec. 124 to a customer with a service address in this state.

KRS 139.200(2)(c)

139.200 Imposition of sales tax. (Effective July 1, 2004)

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

- (2) The furnishing of the following:
 - (c) The sale of admissions except those taxed under KRS 138.480;

The aforementioned statutes provide the basis for taxing the sale of admissions to places of amusement or entertainment, except those taxed under **KRS 138.480**. **Regulation 103 KAR 28:010** further details the taxability of admissions.

GENERAL OVERVIEW

Sales of admissions allowing a person the **right to view or hear an event** are taxable; however, admissions allowing a person the right to use a facility for a **self-participating activity** are not taxable. The tax is levied on the net selling price of the admission, and each admission is to be considered a separate sale.

The sale of an admissions ticket is subject to the sales tax wherever sold if the event to which the admissions apply is to take place in Kentucky.

Admission tickets which are purchased to be given as a complimentary pass are subject to tax, due to the tax being based on the selling price. Complimentary passes given by the vendor or promoter are not subject to tax.

GENERAL INFORMATION

Regulation 103 KAR 28:010 – Admissions

Section 1 of the Regulation indicates that the taxes are levied on the **net selling price** of the admissions, and that each admission is a separate sale.

For example, if a family of four (4) attends a movie, this would require the purchase of 4 tickets, thus four (4) separate sales.

The tax base would be the selling price of each ticket in contrast to the tax base being the aggregate (total) cost of all four (4) tickets.

Section 2 of the Regulation sites some examples of places of amusement/entertainment. The term "**race tracks**" in this portion of the regulation does not include any race tracks that are under the jurisdiction of the state racing commission. For example, this would not include your thoroughbred or standard bred race tracks, i.e., Churchill Downs, Keeneland or Red Mile. It does include such tracks as the drag strip at Clay City.

Section 2 of the Regulation also mentions such places as **cabarets and night clubs**. While the taxability of admissions to such places would appear to be straightforward, there has been litigation in this area.

In May 1984, the Kentucky Department of Revenue issued a final ruling letter to *J. Sutters Mill, Inc.* evolving around the taxpayer's position that the "fee" collected at its entrance should not be considered an admission, thus not taxable. However, the final ruling letter and subsequent Board, Madison Circuit Court and Court of Appeals decisions, all supported the Department's position. The facts brought out in the case indicated that the taxpayer collected a \$1 admission fee at the door that permitted patrons to use amusements or entertainment devices. The court indicated that J. Sutter's Mill,

Inc.'s interpretation of the scope of **KRS 139.100(2)(c)** relied heavily upon **Section 2 of Regulation 103 KAR 28:010**.

The court also stated that **Section 2** of the regulation is a definitional listing exemplifying taxable places of amusement or entertainment. Furthermore, by its own terms, it is not an exhaustive, exclusive definition which precludes the inclusion of other places of entertainment. The court also considered it noteworthy that dance halls, cabarets and night clubs are included within the regulation.

The court recognized that while J. Sutter's Mill, Inc.'s facility technically may not have constituted a dance hall, cabaret or night club in all particulars, the record contained substantial evidence upon which the Board could determine that the facility possess many of the characteristics generally associated with such forms of entertainment. Food and alcoholic beverages were sold and consumed on the premises. Music was played on a stereo sound system and patrons engaged in dancing. Programs and events were televised on a soundless wide screen television. The language of the regulation, considered in light of the evidence presented at the hearing, clearly supported a finding that a facility such as that of appellant's was a place of entertainment.

Section 3 of Regulation 103 KAR 28:010 addresses how to specifically handle situations involving **swimming pools and skating rinks**. This example particularly stresses the different tax treatment for participating and nonparticipating activities, i.e., a separate admission charge for spectators is taxable; whereas, admission charges for use of the facility are not taxable.

Section 4 of Regulation 103 KAR 28:010 addresses, in part, **admissions to race tracks** upon which tax is levied under **KRS 138.480 - State Tax on Race Track Admissions**.

KRS 138.480 states that "Each person entering the grounds or enclosure of any race track at which a live race meeting is being conducted under the jurisdiction of the Kentucky Horse Racing Authority, for the purpose of attending the races or for any other purpose connected therewith, shall pay a tax of fifteen cents (15¢) to the state, except as otherwise provided in this section. If tickets good for more than one (1) day are issued, the sum of fifteen cents (15¢) shall be paid by each person using such ticket on each day that it is used. No admission tax shall be collected from any of the employees of the race track, or any of the owners or trainers of horses, or jockeys, or their employees. The admission tax provided for in this section shall be collected by the race track for each person on entering the race track enclosure on a paid or free admission. The race track shall account to and pay to the state the money so collected."

Box or Reserve Seating

The taxability of admissions to racetracks and reserve seating has been the subject of litigation. In the *Churchill Downs, Inc.* case, the issue in litigation was whether the additional price for box or reserve seating over the "admission" price was taxable under **KRS 139.100(2)(c)**.

It was the taxpayer's position that Churchill Downs had paid both sales tax as imposed by **KRS 139.200** and admissions tax as imposed by **KRS 138.480** on amounts charged patrons for admission to its racing facility. In that the statute exempts from the definition of "retail sale", sales of admissions subject to tax under **KRS 138.480**, the taxpayer contended that all charges made were subject to the tax under **KRS 138.480** and, therefore, not taxable under **KRS Chapter 139**.

The Department agreed that admissions to the racing facility are taxable only under **KRS 138.480**. However, the Department contended that "admissions" as used in **Regulation 103 KAR 28:010(4)** means the price to enter the track. Therefore, any additional price for a reserved seat or box would still be taxable under **KRS 139.100(2)(c)**.

Both the KBTA and the Franklin Circuit Court decided in favor of the taxpayer and the Department chose not to appeal. Therefore, any additional price for a reserved seat, etc. is not considered a taxable admission (subject to taxation under **KRS Chapter 139**).

In rendering this decision, the Board indicated that charges exacted by a race track from its patrons for upgrading ordinary admission into reserve or box seating were exempt from retail sales tax as race track "admissions" (subject to an excise tax under Section 138.480), even though the upgrading fee was supplemental to the fee charged for admission to the track grounds. Although the term "admission" is defined in Webster's Dictionary as the "fee paid at or on entering," the meaning of the term as used in the sales tax statute was broad enough to include any "fee charged to enter a place or location" regardless of whether paid at entry. The Department of Revenue was also bound by the broad meaning given to "admission" in the Department's own **Regulation 103 KAR 28:010**, which exempts from sales tax, admissions to race tracks upon which the race track excise tax is levied. The exemption also applied to charges for the use of the race track's clubhouse facilities.

The impact of the court's decision is that any additional charge for reserve seating at the race track will not be subjected to **KRS Chapter 139** taxation.

Simulcasting (Horse Racing Bill)

As far as the relationship between sales tax and simulcast wagering admissions is concerned, it is emphasized that **KRS Chapter 139** levies the 6 percent sales tax upon retail sales of tangible personal property and the furnishing of certain facilities and services. This includes the sale of admissions to places of amusement or entertainment except those taxed under **KRS 138.480**.

As indicated earlier, **KRS 138.480** provides for a 15 cent state tax on each ticket for admission of a person to a Kentucky race track at which a race meeting is being conducted under the jurisdiction of the Kentucky Horse Racing Authority. The imposition of the 15 cent tax on the sale of a race track admission precludes subjecting such admission sale to the 6 percent sales tax. However, a simulcast race wagering activity for which a charge is made to gain entry to the simulcast wagering facility represents an admission charge not subject to the tax imposed under **KRS 138.480**. Consequently, the **admission charge to the simulcast wagering facility is subject to the sales tax**.

In accordance with **KRS 230.378(5)**, "a receiving track shall be exempt from the admission tax levied in **KRS 138.480** and from any license fee imposed by statute or regulation by the authority." A receiving track is defined as "a track where simulcasts are displayed for wagering purposes." In other words, a "receiving track" is a track that receives a simulcast signal from another track for wagering purposes and only on those days in which its simulcasts are displayed.

An admission of this nature that is not taxed under **KRS 138.480** is subject to the sales tax. If a track conducts live racing and simulcasting on the same card, the 15¢ admission tax is applicable, not the 6% sales tax. The General Assembly did not exempt any track conducting any "live" racing from the admissions tax.

Historical Sites

Regulation 103 KAR 28:010, section 4 exempts admissions to **historical sites** defined in **KRS 139.482**. This statute defines historical sites as property listed in the national Register by the United States Department of the Interior as authorized by Title 15, United States Code, Section 470(f), and operated by a nonprofit corporation, society or organization. A listing of historical sites can be obtained by going to the web site for the National Register of historical sites. The web address is <http://www.cr.nps.gov/nr/research/index.htm>. This site can be searched by state, state & name, or state and city.

Admissions to view plays, concerts or other events held at historical sites are subject to sales tax while the exemption for admissions to historical sites pertains to charges to view or tour the premises for their historical value.

Admissions Sold by Nonprofit Institutions

Some explanation and historical context are needed in order to discuss this area of admissions taxation. First the language in this area is very specific when nonprofit institutions are being discussed. The taxation of admissions differs markedly depending upon whether the nonprofit in question is an educational institution, a charitable institution, a religious organization or a governmental entity. There are historical as well as institutional reasons for this differing treatment of admissions.

In 1976, KRS 139.495 was enacted, which simply stated, exempted nonprofit entities' purchases but taxed their sales. In 1978, KRS 139.495 was amended to make the exemption on purchases contingent with the institutions qualifying for exemption from income taxation under Section 501(c)(3) of the internal revenue code.

In 1980, Governor Brown announced that because of restrictions contained in Section 170 of the Kentucky Constitution, nonprofit educational and nonprofit charitable institutions would not be required to collect or pay sales tax on any sales made on or after January 1, 1981. This proclamation did not include religious institutions because for them the exemption attaches to the property, not the institution. However, because of this proclamation a court case ensued involving Kennedy Bookstore.

Kennedy Bookstore was in direct competition with the University of Kentucky Bookstore. Kennedy filed suit contending that while charitable and educational institutions are exempt from paying sales tax on their sales because the legal incidence of the tax falls on them, they are not exempt from collecting the use tax from consumers of tangible property. The Franklin Circuit Court agreed and ruled in Kennedy Bookstore's favor.

Admissions are an example of a taxable service. Sales of admissions are not sales of tangible property. Thus, despite the ruling in Kennedy Bookstore when a nonprofit charitable or educational institution sells an admission they do not collect the use tax because the property is not tangible and they cannot be compelled to collect the sales tax per Governor Brown's Proclamation.

The language in **Regulation 103 KAR 28:010, Section 4** reflects these facts. Notice that the language here is specific in that it delineates only nonprofit charitable and educational institutions qualifying for exemption from taxation per KRS 139.495. For this exemption to apply the entity must be a 501(c)(3) charity or a nonprofit educational institution. A for-profit educational entities' admissions would be taxable. Likewise a nonprofit entity that is not a charity such as civic and community nonprofit entities would be subject to tax on their charges for admissions. Examples of such entities could include Lions clubs, Fraternal Orders of Police, etc.

In a related matter, it should be noted that while KRS 139.495 (4) exempts sales made by nonprofit, school sponsored clubs and organizations (booster clubs, etc.) it specifically provides that the exemption for such sales do not extend to admissions.

As previously noted Governor Brown's Proclamation did not pertain to religious organizations despite their nonprofit status because the exemption attaches to the property and not the organization. Therefore, the sales of admissions by religious organizations (churches, synagogues, etc.) are and always have been subject to the sales tax.

Sales made by governmental entities were never included in Governor Brown's proclamation or discussed in Kennedy Bookstore. Hence, admissions sold by such entities are subject to sales tax.

In Summary

Admissions Sold By	Are	Examples
Nonprofit Charities	Exempt	Goodwill, Salvation Army
Civic Not for profits	Taxable	Lions Club, Fraternal Orders
Not for Profit Educational	Exempt	University of Kentucky
For Profit Educational	Taxable	Sullivan College
Governmental Entities	Taxable	State Fair
Religious Organizations	Taxable	Church plays
Nonprofit school sponsored Clubs	Taxable for athletic events	

Donations

In situations where the payment of a fee or a charge is required as a prerequisite to being admitted to a performance, activity or event, the sales tax cannot be avoided by designating the fee or charge a donation.

On the other hand, where admittance to the performance, activity or event is not dependent on the payment of a fee or charge and the person can voluntarily make a contribution or will be admitted without making a donation, the receipt of the donation is not subject to sales tax.

Events Within/Without Kentucky

The sale of an admissions ticket is subject to the sales tax wherever sold if the event to which the admission applies is to take place in Kentucky.

On the other hand, if the sale of admissions occurs in Kentucky to an event to be held outside this state, such sale is not subject to the Kentucky tax.

SPECIFIC TYPES OF ADMISSIONS

Instructional Seminars

Admissions to seminars which have a primary purpose of educating its participants are not considered taxable. In other words, gross receipts from tuition, registration fees or ticket sales to gain entry to such conference, seminar or workshop do not constitute “admissions” within the meaning of the sales tax law. Such events should be characterized by systematic instruction from qualified presenters using methods common to institutions of learning.

Examples of exempt educational events are seminars, conferences or workshops attended by such licensed professionals as attorneys, accountants, engineers, pharmacists, physicians, nurses, etc., where the attendees may obtain credit toward mandatory continuing education. Similar events for nonlicensed or licensed persons are also exempt if the primary purpose is to educate the attendees in new developments in their occupations or to improve or learn new skills.

In a related matter, books and tapes sold separately from seminar fees are taxable. Books and tapes included in seminar charges are subject to use tax on the seminar provider.

Memberships to Country Clubs

Memberships to country clubs are not considered admissions. In a related matter, it is typical for a country club to require a member to spend a certain amount of money each month on food and beverage and to the extent that the member does consume food and beverage, such member is charged the price of the meal plus sales tax. However, if such member fails to spend the minimum amount, he/she is billed for the difference. Where a minimum food and drink purchase requirement is established for the Country Club members and a member purchases less than the

minimum and is billed for the deficiency, such payments are considered additional membership fees and are not includable in taxable gross receipts from sales of food and drink by the club. This difference does not represent a purchase of tangible personal property or a taxable service.

In other words, billings to club members for the unused portion of their minimum requirement do not represent sales of food and beverage and are not subject to tax.

Boxing and Wrestling Matches

The Kentucky Department of Revenue maintains the position that admissions to boxing and wrestling matches are not subject to sales tax.

KRS 229.031 provides that every person conducting a professional boxing or wrestling match or exhibition must pay to the Kentucky Athletic Commission a tax of five percent (5%) of the gross receipts from the sale of all tickets to the match or exhibition. Also, a tax of five percent (5%) of the gross receipts from all other sources, direct or indirect, including but not by way of limitation the gross receipts from the sale, lease or other exploitation of broadcasting, television and motion picture rights of such contests. Accordingly, since the admissions to boxing and wrestling matches are subject to tax under **KRS 229.031**, the Kentucky Department of Revenue does not require the remittance of sales tax on the admission price.

Pay Lakes

Tax implications hinge on whether the participants pay to fish or are charged based on the pounds of fish caught.

If the amount paid represents merely a fee to fish, this fee is not a taxable admission, but the operator would owe use tax on his purchase price of the fish.

If the fee paid is based on the pounds of fish caught and includes the service of cleaning, such fee would be exempt as a sale of food and the pay lake operator may purchase the fish under a resale certificate.

High School Sporting Events

Admissions to high school sporting events are not subject to sales tax. See the section entitled Nonprofit Institutions for further information.

Circuses, Fairs and Carnivals

Admissions to **circuses, fairs and carnivals** are taxable, along with admissions to events held within these establishments. Tickets sold which allows the purchaser to take rides at such events are not taxable.

County Fair Admissions

The 2005 General Assembly passed **House Bill 497** which included provision to exempt from sales and use tax the first \$50,000 in county fair admissions effective June 20, 2005.

ADDITIONAL QUESTIONS/ANSWERS

Question: Are admissions to shows and events sponsored by civic, governmental and religious organizations taxable?

Answer: Yes.

Question: If a show tours Kentucky but has a different sponsor at each location, is the sponsor liable for tax on admissions?

Answer: The person who manages the sale of admissions must register and pay the sales tax on the admission charges.

Question: Is a cover charge considered to be an admission subject to sales tax?

Answer: Yes.

Question: Are admissions to dances taxable?

Answer: Yes, except sales of admissions to dances conducted by educational and charitable institutions.

Question: If the cover charge is a minimum charge that may be applied on the purchase of food and drink by the customer, does the tax apply?

Answer: Yes, but only to the extent that the cover charge exceeds the total price for food and drink purchased by the customer.

Question: Are complimentary passes that may be used as an admission subject to sales tax?

Answer: If the ticket was purchased to be given as a complimentary pass, the purchase is subject to tax. If the vendor or promoter of the event distributes complimentary passes, the tax does not apply.